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<b>D.W., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 20-1363</b>
	)	<b>Issued: September 14, 2021</b>
<b>U.S. POSTAL SERVICE, GROVETOWN POST</b>	)	
<b>OFFICE, Grovetown, GA, Employer</b>	)	
	)	

*Eric B. Blowers, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

## DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge  
 JANICE B. ASKIN, Judge  
 VALERIE D. EVANS-HARRELL, Alternate Judge

## JURISDICTION

On July 2, 2020 appellant, through counsel, filed a timely appeal from a June 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the June 10, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish disability from work for the period November 16, 2018 through July 19, 2019 causally related to her accepted October 4, 2018 employment injury.

## **FACTUAL HISTORY**

On November 29, 2018 appellant, then a 48-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained shoulder and arm nerve damage due to repetitive factors of her federal employment, including lifting and reaching. She first became aware of this condition on October 4, 2018, but did not realize the relationship to her federal employment until October 15, 2018.

In forms dated October 4, 12, 29, and November 16, 2018, Dr. Brett Wallentine, a Board-certified family medicine physician, requested that appellant be excused from work from October 4 to 21, 2018, October 29 to November 8, 2018, and November 16 to 22, 2018. He noted that appellant had been under his care for treatment for right arm pain.

In a November 20, 2018 form, Dr. Wallentine diagnosed right shoulder/elbow pain and provided shoulder and elbow restrictions of no overhead work, no lifting more than five pounds, and limited use of the right arm.

In a January 17, 2019 report, Dr. Fitz N. Harper, Jr., a Board-certified anesthesiologist, recounted appellant's history and job duties. Physical examination findings included decreased cervical, shoulder, and wrist range of motion, positive Spurling's with paresthesia to right triceps, tenderness over both medial and lateral elbow epicondyles, and very tender right wrist over ulnar area proximal to joint and radial wrist joint area, positive right shoulder apprehension, drop arm test and Dawbarn test, positive right Cozen's and Mills test at the elbow, positive bilateral Phalen's and Finkelstein's test, and positive testing for hypoesthesia in the right C5, C6, C7, and C8 dermatomal area. Dr. Harper diagnosed right cervical radiculopathy with myelopathy, cervical sprain and strain with myofascial pain syndrome, right shoulder pain with possible impingement, lateral/medial elbow epicondylitis, and right wrist sprain and strain. He described appellant's work duties and noted that appellant had not worked since October 4, 2018 when she heard popping sound and developed right shoulder pain radiating into her elbow lifting packages while delivering mail. Dr. Harper noted that appellant provided a clear history of injury while performing her work duties and opined, with reasonable degree of medical certainty, that the diagnosed conditions were supported by physical examination findings, history, and her complaints. He also noted that appellant was highly motivated to return to work once her conditions had been treated and pain reduced.

In a memorandum of telephone call (Form CA-110) documenting a telephone conversation with appellant on April 17, 2019, OWCP requested further information as to how her alleged injury occurred. Appellant related that on October 4, 2019 she was delivering mail when her right arm became so painful she could not hold any mail and she had a sharp pain from her right shoulder, to her elbow, and down to her hand.

By decision dated April 17, 2019, OWCP converted appellant's occupational disease claim to a claim for traumatic injury occurring on October 4, 2018. It accepted the claim for right elbow lateral epicondylitis. OWCP also noted that Dr. Harper diagnosed conditions due to long-term repetitive duties and advised her to file an occupational disease for any conditions which occurred over more than one day.

On May 23, 2019 OWCP received progress notes dated October 4, 29, and November 16, 2018 from Dr. Wallentine. On October 4, 2018 Dr. Wallentine noted that appellant was seen for right shoulder, elbow and arm complaints. Appellant related a sudden onset of symptoms which started one to seven days prior. He noted the mechanism of injury included repetitive trauma. Physical examination findings included tenderness on palpation over radial and ulnar nerve areas, normal right upper extremity range of motion in directions with pain over elbow lateral and medial aspect and deltoid lateral aspect. Dr. Wallentine diagnosed right shoulder pain and right elbow medial and lateral epicondylitis.

In progress notes dated October 29, 2019, Dr. Wallentine reported his examination findings and diagnoses were unchanged from his October 4, 2018 report.

Dr. Wallentine, in November 16, 2018 progress notes, reported that appellant was seen for continued complaints of right shoulder and arm pain. He noted that appellant had attempted to return to work, but had to stop due to arm/shoulder pain. Examination findings were unchanged. Diagnoses included right shoulder pain and right elbow medial and lateral epicondylitis.

A duty status report (Form CA-17) dated May 23, 2019 was illegibly signed by a certified family nurse practitioner. It noted an injury date of October 4, 2018, indicated that appellant had right elbow pain, and related that appellant was disabled from work.

On June 27, 2019 appellant filed claim for compensation (Form CA-7) for intermittent disability from work for the period October 4, 2018 through June 21, 2019.<sup>4</sup>

In a development letter dated July 2, 2019, OWCP requested that appellant submit additional information to establish her wage-loss compensation claims, including medical evidence from her physician explaining why she was unable to work during the period October 4, 2018 through June 22, 2019, noting that pain was not compensable.<sup>5</sup> It afforded her 30 days to submit the necessary evidence.

In a report dated July 8, 2019, Dr. Harper noted that appellant was first seen on November 29, 2018 for an October 4, 2018 employment injury. He related that her diagnoses included right elbow lateral epicondylitis, right shoulder impingement syndrome with possible rotator cuff tear, cervical radiculopathy with myelopathy, cervical sprain and strain with myofascial pain syndrome, and right wrist sprain and strain. Appellant's current physical examination findings were detailed, including positive Cozen's and Mills' test of the right elbow. Dr. Harper opined that appellant was temporarily totally disabled and unable to work at this time.

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<sup>4</sup> Appellant noted that she had taken sick leave on October 4, 2018, annual leave on October 5, 2018, and had worked from November 9 to 14, 2018.

<sup>5</sup> By decision dated April 17, 2019, OWCP denied appellant's claim for continuation of pay for the period October 4 through November 15, 2018 as she did not file her claim within 30 days from the date of the alleged injury.

He noted a functional capacity evaluation (FCE) was scheduled for July 17, 2019 and he would determine appellant's ability to return to work at her next examination on August 7, 2019. In a Form CA-17 of even date, Dr. Harper noted diagnoses of right elbow lateral and medial epicondylitis, unspecified right shoulder rotator cuff tear or rupture, cervical radiculopathy, unspecified right wrist sprain, and right shoulder impingement. He found appellant disabled from work.

On July 12, 2019 appellant filed a Form CA-7 claiming disability from work for the period June 22 to July 5, 2019.

In a development letter dated July 24, 2019, OWCP requested that appellant submit additional information to establish her wage-loss compensation claims, including medical evidence explaining why she was disabled for work during the period June 22 through July 5, 2019, finding the evidence insufficient to establish that her disability during this period was causally related to the accepted right elbow lateral epicondylitis. It afforded her 30 days to submit the necessary evidence.

On July 25, 2019 appellant filed a Form CA-7 claiming disability from work for the period July 6 through 19, 2019.

OWCP received magnetic resonance imaging (MRI) scans dated July 23, 2019 of the right elbow and wrist and demonstrating partial common extensor tendon tear, small elbow joint effusion, and mild ulnar nerve prominence posterior to medial epicondyle, small radiocarpal joint effusion, mild positive ulnar variation, and attenuation involving central triangular fibrocartilage articular disc likely reflecting a tearing component.

In a development letter dated July 30, 2019, OWCP requested that appellant submit additional information to establish her wage-loss compensation claims, including medical evidence explaining why she was unable to work during the period July 6 through 19, 2019. It noted that the July 23, 2019 MRI scans were insufficient to establish her disability during this period was causally related to the accepted right elbow lateral epicondylitis. OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated September 3, 2019, OWCP denied appellant's claim for compensation for disability from work for the period July 6 through 19, 2019, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed disability and her accepted right elbow lateral epicondylitis.

By a second decision of even date, OWCP denied appellant's claim for compensation for disability for the periods October 4, 2018 through June 21, 2019, and June 22 through July 5, 2019, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed disability and her accepted right elbow lateral epicondylitis.

Subsequent to the September 3, 2019 OWCP decisions, OWCP received an undated report from Dr. Harper who noted that he first saw appellant on November 29, 2018 and that she had been disabled since that date from performing duties as a rural letter carrier. Specifically, Dr. Harper advised that she was unable to engage in the repetitive activities required of her job and was unable to lift packages. He noted that appellant's injury may have included a shoulder injury for which he requested diagnostic testing for confirmation. Dr. Harper concluded that she

was disabled from the date of injury from performing overhead lifting or lifting more than five pounds in her regular daily activities.

In a September 16, 2019 Form CA-17, Dr. Harper diagnosed right elbow lateral and medial epicondylitis, unspecified right shoulder rotator cuff tear or rupture, cervical radiculopathy, unspecified right wrist sprain, and right shoulder impingement and found appellant disabled from work.

On September 25, 2019 appellant, through counsel, requested reconsideration.

On October 8, 2019 OWCP received progress reports covering the period November 29, 2018 through March 8, 2019 from Dr. Harper diagnosing right elbow lateral epicondylitis, right shoulder impingement syndrome with possible rotator cuff tear, cervical radiculopathy with myelopathy, cervical sprain and strain with myofascial pain syndrome, and right wrist sprain and strain. Examination findings were unchanged and he again reiterated his opinion that appellant was disabled from work.

By decision dated December 18, 2019, OWCP denied modification of OWCP's decisions.

In reports dated October 30, November 12, and December 19, 2019, Dr. Alex D. Collins, a Board-certified orthopedic surgeon, related appellant's history of injury and medical treatment. He provided examination findings, and diagnosed right elbow lateral epicondylitis, right shoulder strain, and right elbow ulnar nerve entrapment. On October 30, 2019 Dr. Collins released appellant to return to work with restrictions of no lifting more than 10 pounds.

In a January 7, 2020 report, Dr. Harper referenced his prior reports including a September 9, 2019 report in support of his finding that appellant was totally disabled due her work-related injury. He related that as his prior reports apparently were not abundantly clear, he would be as unequivocal as possible. Dr. Harper, thereafter, related that appellant's disability was directly related to her accepted condition of lateral epicondylitis. He explained that as a result of the injury she could not engage in lifting more than five pounds or perform any overhead lifting due to her lateral epicondylitis, which was an overuse injury that resulted in pain and weakness. Dr. Harper concluded that appellant's accepted lateral epicondylitis was the cause of her disability and prevented her from performing her work duties.

On March 19, 2020 OWCP received additional evidence including a May 23, 2019 report from Dr. Harper, which was repetitive of prior reports.

By decision dated June 10, 2020, OWCP denied modification. It found that the evidence was insufficient to establish disability for the period November 16, 2018 through June 21, 2019 causally related to the accepted October 2018 employment injury.

## LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup>

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>7</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>8</sup> An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>9</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.<sup>10</sup>

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.<sup>11</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>12</sup>

## ANALYSIS

The Board finds that this case is not in posture for decision.

In support of appellant's claim, OWCP received numerous reports from Dr. Harper noting appellant's history of injury on October 4, 2018 and detailing physical examination findings. Dr. Harper diagnosed right elbow lateral epicondylitis, right shoulder impingement syndrome with possible rotator cuff tear, cervical radiculopathy with myelopathy, cervical sprain and strain with

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<sup>6</sup> *A.R.*, Docket No. 20-0583 (issued May 21, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> 20 C.F.R. § 10.5(f).

<sup>8</sup> *See A.R.*, *supra* note 6; *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>9</sup> *See A.R.*, *id.*; *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>10</sup> *See A.R.*, *id.*; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

<sup>11</sup> *See A.R.*, *id.*; *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>12</sup> *A.R.*, *id.*; *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

myofascial pain syndrome, and right wrist sprain and strain, and related that appellant was disabled from work. OWCP found that his reports were insufficient to establish appellant's claim as they did not relate that appellant's accepted right elbow lateral epicondylitis condition caused her disability. To clarify his prior reports, in a January 7, 2020 report, Dr. Harper explained that as a result of the accepted right lateral epicondylitis condition appellant could not engage in lifting more than five pounds or perform any overhead lifting. He specifically attributed appellant's inability to perform her date-of-injury job and resulting disability to her accepted lateral epicondylitis.

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>13</sup> While Dr. Harper's reports including his January 7, 2020 report do not contain sufficient rationale to discharge appellant's burden of proof by the weight of the reliable, substantial, and probative evidence that her claimed disability was caused or aggravated by the accepted employment injury, these reports raise an inference of causal relationship sufficient to require further development of the case record by OWCP.<sup>14</sup>

The Board, therefore, finds that the case must be remanded for further development of the medical evidence. OWCP shall refer appellant to a specialist in the appropriate field of medicine for a reasoned opinion regarding whether her claimed disability was causally related to the accepted October 4, 2018 employment injury. If the physician opines that the claimed disability is not causally related to the accepted October 4, 2018 employment injury, he or she must explain with rationale how or why their opinion differs from that of Dr. Harper. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>13</sup> *M.A.*, Docket No. 19-0905 (issued January 26, 2021); *J.H.*, Docket No. 18-1637 (issued January 29, 2020). See also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>14</sup> See *M.A.*, *id.*; *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 10, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with decision of the Board.

Issued: September 14, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board